

Task Force on the Future for Growth and Development

Draft Recommendations- For Discussion Only

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1. Modernize the Planning Visions

Update the Eight Visions to reflect the Task Force's recently drafted Twelve Visions

The 8 Visions were first adopted in Maryland via the 1992 Economic Growth, Resource Protection, and Planning Act. They were initially developed by the “Year 2020 Panel of Experts,” an inter-disciplinary group convened by the Chesapeake Bay Commission in 1987 to evaluate the impact of future growth in the Chesapeake Bay Region. The 2020 Panel issued its report in December 1988 and described 6 Visions needed to strike a balance between growth and environmental needs.

State Finance and Procurement Article §5-7A-01 provides that the Visions are Maryland’s “Economic Growth, Resources Protection and Planning Policy” (i.e., the State’s growth policy). Section 5-&A-02 limits state funding for various capital projects unless the projects are consistent with the growth policy or “the local plan of the jurisdiction in which the project is located.”

The Visions are also incorporated in Article 66B (Land Use) §1.01 and apply to all counties and municipalities in Maryland. Local jurisdictions are required to implement the Visions through the plan. Further, §4.09 requires that jurisdictions “shall ensure that the implementation of the provisions of the plan that comply with §§1.01 and 3.05(a) (4)(vi) and (viii) [the land use and sensitive areas elements] are achieved through the adoption of applicable zoning ordinances...subdivision ordinances...and other land use ordinances...that are consistent with the plan.”

Any proposed change to the Visions would need legislative action in order for the new Visions to replace the current language. As a practical matter, changes to the Visions would require local governments to comply with the new visions as part of the comp plan update cycle and subsequently to revise local land use ordinances. Importantly, the State Development Plan would need to incorporate the new Visions and State agencies would begin to evaluate programs and policies to comply with the more specific language of the proposed Visions.

The existing Visions have been in place for 16 years. During that timeframe they have not been modernized to keep pace with current growth and development patterns. The improved set of

Visions better address these current growth and development patterns by specifically discussing growth areas, community design, transportation, housing, economic development, public participation and implementation. Below are the existing and revised Visions.

The Eight Visions (Economic Growth, Resource Protection, and Planning Act of 1992)

1. Development is concentrated in suitable areas;
2. Sensitive Areas are protected;
3. In rural areas, growth is directed to existing population centers and resource areas are protected;
4. Stewardship of the Chesapeake Bay and the land is a universal ethic;
5. Conservation of resources, including a reduction in resource consumption, is practiced;
6. To assure the achievement of [the] above, economic growth is encouraged and regulatory mechanisms are streamlined;
7. Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur; and
8. Funding mechanisms are addressed to achieve these visions.

Revised Visions

1. **Quality of Life and Sustainability:** A high quality of life is achieved through universal stewardship of the land, water and air resulting in sustainable communities and protection of the environment.
2. **Public Participation:** Citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals.
3. **Growth Areas:** Growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers.
4. **Community Design:** Compact, mixed-use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources.
5. **Infrastructure:** Growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner.
6. **Transportation:** A well-maintained, multimodal transportation system facilitates the safe, convenient, affordable and efficient movement of people, goods and services within and between population and business centers.
7. **Housing:** A range of housing densities, types, and sizes provide residential options for citizens of all ages and incomes.

8. **Economic Development:** Economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities is encouraged.
9. **Environmental Protection:** Land and water resources, including the Chesapeake and coastal bays, are carefully managed to restore and maintain healthy air and water, natural systems and living resources.
10. **Resource Conservation:** Waterways, forests, agricultural areas, open space, natural systems and scenic areas are conserved.
11. **Stewardship:** Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

2. Strengthen Comprehensive Plans

A. Recommend a legislative response to the Terrapin Run case

The opinions of the Court of Appeals in *Trail, et al. v. Terrapin Run, LLC, et al.*, No. 44, September Term, 2007 (March 11, 2008) contains a wide-ranging discussion of the history of planning in Maryland and the role of a local jurisdiction's comprehensive plan. The concern is that the overall effect of the opinion is the weakening of the link between the comprehensive plan and its implementing ordinances, such as zoning.

The Terrapin Run decision did not consider Section 4.09 of Article 66B which requires that "a local jurisdiction shall ensure that the implementation of the provisions of the plan...are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan." The comprehensive plan is also required to be reviewed at least once every six years and if necessary revise or amend the plan. In addition, at intervals that correspond to the plan revisions, the local jurisdiction is to ensure that the plan is implemented through land use ordinances and regulations that are consistent with the plan.

The advantages of a comprehensive plan are apparent. First, the comprehensive plan is prepared by professionals on the planning commission, who are able objectively to evaluate population projections, economic factors, resource limitations, and environmental protection. Secondly, the process involves numerous stakeholders and is open to the public. It represents the application of State-established planning criteria to the particular circumstances of the local jurisdiction by

the local jurisdiction. It represents the broad vision of the people of the jurisdiction for their future. Thirdly, although the plan can be revised more frequently, its six-year lifetime virtually assures that it will survive through changes of administration and the membership of the local legislative body. This longer-term planning horizon reduces uncertainty and facilitates the coordination of development with the necessary infrastructure.

The people of Maryland are best served if all land use decisions conform to the overall comprehensive plan in both the location and timing of development. Development of property consistently with the locally developed and adopted comprehensive plan is mandated by statute; it is achievable; and it is good policy.

B. *Develop metrics and measures to track growth trends and to help implement comprehensive plans' goals and recommendations*

C. *Implementation of the comprehensive plan*

While comprehensive plans are the broad vision of the jurisdiction for its future, including recommendations of varying detail, the plans need to be implemented. This includes ordinances such as zoning, subdivision regulations, capital budgeting for infrastructure and land preservation, and many other actions. The Task Force recommends that local jurisdictions actively pursue implementation of their comprehensive plans upon adoption, via a schedule that is part of the plan.

D. *State Agency comments on comprehensive plans*

MDP and other State agencies comment on local government plans. Currently, that comment period is required 60 days before the local plan is adopted. This comment period would be more useful if it occurred earlier in the plan develop process so that there was more of an opportunity for collaboration and incorporation of the comments into the plan. The Task Force recommends that MDP and local governments amend the current review and comment process such that preliminary comments and discussions can occur much earlier in the plan development process.

3. Sharpen the Focus of the PFA's

A. *Reconfigure the existing Priority Funding Areas to more efficiently target State capital and non-capital resources*

The broad purpose of Priority Funding Areas (PFAs) is to focus State spending to make the most efficient and effective use of existing infrastructure, to preserve existing neighborhoods and to preserve Maryland's fields, farms, and open spaces. PFAs, established by law, include:

- Municipal boundaries as of January 1997
- Designated Neighborhood Program Areas

- Enterprise Zones
- Heritage Areas that are also county growth areas
- Inside the Beltways
- Local Governments MAY certify additional areas consistent with criteria (growth areas)

Certain criteria must be met in order for an area to be a certified PFA: Existing or planned water and sewer service, average permitted residential density of 3.5 units per acre, growth plan consistent with projections, and a PFA size based on an assessment of land needed for 20 years' growth.

Nearly 12 years have passed since the PFA law was adopted. Like the Visions, the PFA law has never been changed to meet the current landscape of growth and development. The Task Force has ascertained the necessity of recommending changes for PFAs in order to better serve Marylanders. The Task Force provides an opportunity to spur meaningful consideration of how PFAs can be improved for Maryland's future. PFAs determine how the State of Maryland invests its resources to promote smart growth, so consideration should be given to how the State's investments can improve Maryland's fiscal health.

A workgroup has been examining ways in which the current PFA law could be restructured to promote better outcomes in development patterns and for wiser investment of the State's limited dollars. [A possible restructuring of the PFAs being explored by the workgroup is a tiering of the PFAs into various categories that use the existing PFA boundaries. The potential tiers include Priority Growth Areas, Priority Reinvestment Areas and Stabilization Areas.] *(Add recommendations after Workgroup report and discussion)*

B. Focus on Transit Oriented Development (TOD)

- Link eligibility of State TOD incentives to local government adoption of TOD-friendly planning, zoning, TOD supportive infrastructure policies and financing, TOD supportive housing programs, and/or other measures. Specifics of the linkage mechanism should be established by State staff.

- Support local government adoption of TOD-friendly planning, zoning, TOD supportive infrastructure policies and financing, TOD supportive housing programs, and/or other measures by developing model codes and by assisting in the local development of community-appropriate, customized solutions that implement the purpose and intent of the model TOD codes to promote active, income-diverse pedestrian- and transit-friendly communities.

- Create a capitalized TOD Revolving Loan Fund for gap financing for TODs. This program could be administered similarly to the DHCD program for Neighborhood Business Development Programs.

- Define & implement a program for financing bicycle & pedestrian facilities in all TODs, and for financing structured parking for TODs where the supply of parking has been pinched by the redevelopment of existing surface parking as new real estate or by reductions in the amount of allowable parking in new residential and/or commercial development. The Maryland Transportation Authority could act as the financing agency.

- Provide the State's full faith and credit to TOD-zone TIF districts.

4. Land Preservation for Resource Production and Protection

A. Explore Expansion of Transfer of Development Rights Programs

Article 66B §§11.01 states that:

"A local legislative body that exercises authority granted by this article may establish a program for the transfer of development rights to:

- (1) Encourage the preservation of natural resources; and
- (2) Facilitate orderly growth and development in the State."

While local governments have been authorized to develop transfer of development rights (TDR) programs at the local level, few local jurisdictions have done so because of the complexity of TDR programs. Only two jurisdictions (Montgomery and Calvert Counties) that have TDR programs have been able to create successful programs that have preserved land by creating markets for the transferred densities.

Despite the proven difficulty in creating TDR programs that can preserve land, the Task Force believes that further study on a statewide or regionally based TDR program is warranted. A statewide or regionally based TDR program may be successful since the possibility of finding a receiving area for the transferred densities increase when the potential areas are broadened. The Task Force requests the establishment of an intra-agency workgroup to report back to the Task Force by December 1, 2009 on whether a statewide or regional TDR program is needed.

B. Targeting Agricultural Protection

By implementing the reorganization of Priority Funding Areas to include a conservation category, growth in rural areas can be directed to growth areas. Funding mechanisms linked to preservation of rural resources as a part of a PFA reorganization can also be a strong measure for

protection of rural resources. The Task Force recommends that the State concentrate its expenditures of rural land and resource conservation funds where the investment is protected by local zoning and land use management authority, encouraging all counties to take similar steps. To be certified by the State as effective programs, a county's rural zoning districts and associated subdivision regulations must stabilize rural land use for preservation by limiting residential subdivision and development, to provide time for easement acquisition to achieve preservation goals before land resource and agricultural industry are excessively compromised.

5. Infrastructure and Funding Priorities

A. Require that the Maryland Department of Planning update the 2004 Infrastructure Survey

In order to better assess the state of Maryland's infrastructure this survey should be completed every ten years. It will be necessary to make changes to the survey to ensure better clarity in the definition of terms so that the results are consistent.

B. Expand the Department of Housing and Community Development's Local Government Infrastructure Finance Program

Requests from local governments for assistance with municipal bond financing have nearly tripled from \$33 million in 2007 to more than \$100 million in 2008. The Maryland Housing Fund's resources can be used as an effective credit enhancement, replacing the costly private bond insurance that now excludes many smaller towns and cities from the municipal bond market.

C. Reauthorize the Maryland Heritage Rehab Credit and Remove Aggregate Caps

From 1996 to 2003, the Maryland Heritage Structure Rehabilitation Tax Credit Program was widely evaluated as the most effective program of its type in the nation. During that period, respected economic development and planning experts described the tax credit program as Maryland's most powerful and effective Smart Growth, economic development and community revitalization tool. The rehabilitation incentivized by the tax credits has proven advantages over new construction in its return on investment, increased tax revenues, job creation, energy and natural resource conservation. The undisputed success of the program led to concerns about the unpredictability of annual tax credit outlays and, ultimately, detrimental legislative restrictions.

The program, which must be reauthorized by the General Assembly, can be a strong tool to direct growth and development to existing neighborhoods and commercial areas. The removal of aggregate caps can potentially translate into more investments.

D. Housing Needs

- **Increase resources and activities to support affordable/workforce housing**

As home prices have increased substantially over the last years accompanied by rising construction costs, the resources available to support affordable housing activities have become stretched. Recent changes in the financial markets have lowered the capacity of some existing tools such as LIHTCs which are garnering substantially less leverage than in recent years. Expanded federal, state, and local actions through budgetary commitments as well as regulatory actions (such as through inclusionary housing policies) are needed.

- **Include jobs/housing balance in comprehensive plans**

The failure to adequately plan for housing that is adequate to support employment in a jurisdiction results in relocation of households to other jurisdictions and states. The end result of this relocation away from employment centers is sprawl development and increased commutes. In fact, according to the U.S. Census Bureau, Maryland has the 2nd worst commute in the country. Some local governments do complete an assessment of housing needs as part of their Consolidated Plans but these activities are typically focused on subsidized housing, are limited in number and scope, and are largely disconnected from Comprehensive Planning and other local tools that guide growth and development. Greater local activity is needed to understand housing needs and work to address housing affordability and housing/jobs balance is fundamental for Maryland to help address the state's systemic housing and growth challenges.

- **Target areas with high foreclosures for reinvestment and reuse with rental and/or homeownership tools**

Maryland has been affected by the national foreclosure crisis which has had critical impacts on the existing built environment and household wealth. Communities such as Prince George's County and Baltimore City have experienced particularly high levels of foreclosures. Reuse of these homes should be encouraged and facilitated through federal, state, local, private, and nonprofit activities.

- **Stimulate the reinvestment and growth of under-tapped markets by enhancing support for small business growth in existing communities**

Many urban markets in Maryland remain underserved by grocery, retail and other businesses found in more affluent areas of the state. Reinvestment and revitalization activities need to be accompanied by programs and activities that can expand and sustain the growth of amenities, services, and businesses to attract new investment and sustain existing communities.

E. Revenues for Infrastructure

The State should provide counties and municipalities with the broadest possible authority for funding local infrastructure projects, including authority to use any reasonable tax, revenue

source or financing vehicle. Local funding decisions should prioritize infrastructure projects that remove reasonable APFO restrictions, moratoria, or other capacity problems that stop or limit development within PFAs. The decision to use a particular tax or funding vehicle should rest with local government.

F. Adequate Public Facilities

Adequate public facilities (APF) are necessary to ensure sustainable, efficient communities where services such as roads, water, sewerage facilities and schools can meet the demands of the population. In Maryland, the planning for development is present but does not always align with the fiscal investments necessary to meet the demands of growth and development. Often, paying for public facilities is not a priority until there is a problem meeting population demands. An APF ordinance (APFO) ties development approvals under zoning and subdivision ordinances to standards for public facilities such as roads, schools, water supply, sewage treatment, emergency services, libraries, ball fields and parks, etc.

The APFO Workgroup was charged with assessing the impact of APFOs on growth patterns and making recommendations for improvements. *(Add recommendations after the Workgroup report and discussion)*

6. State Development Plan

A. Determine the parameters of the State Development Plan (including the State Housing Plan and State Transportation Plan)

The Task Force is charged with determining the parameters for a State Development Plan, State Transportation Plan, and State Housing Plan and determine how these plans work together with local land use plans. MDP, DHCD, and DOT have presented proposed parameters to the Task Force that outline the content of these plans, which have been reviewed and discussed by the Task Force. *(See MDP, DHCD, and DOT parameter documents)*

B. Reconstitute a statewide body to advise on and guide the implementation of the SDP and all growth and development issues

The State Planning Commission sunset in 2002. Reconvening a similar body would benefit Maryland by having a broad-based, independent group oversee the implementation of the State Development Plan and make recommendations on the alignment of resources that affect growth and development. Such a panel can also be used to address inter-jurisdictional issues both in Maryland and with surrounding States.

7. Educational Efforts and Outreach

The Task Force recommends a broad-based outreach about Smart Growth and growth/development issues in general, using a curriculum jointly developed and approved by the State and local governments.